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determination of the social, economic and industrial questions involved, the opinion has recourse to the authority of social, economic and industrial experts. From an examination of these sources it readily comes to the conclusions that private employment agencies have been held to be instruments of grievous injustice; that the remedies of indirect regulation practiced by some twenty-four states of the Union have been found unsatisfactory, the best expert opinion favoring the total abolition of private labor agencies; that the peculiar needs in the State of Washington emphasized the defects of private employment offices; and that the fundamental problem was the chronic one of unemployment, and that, while this is perhaps the gravest and most difficult problem of modern industry, the best informed authorities agree that the establishment of an adequate system of employment offices or labor exchanges is the indispensable first step toward the solution of the problem.

Granting the soundness of the facts and arguments adduced, the opinion seemed necessarily driven to the conclusion that the attempt on the part of the State of Washington by the act in question to overcome industrial maladjustment and unemployment must be upheld as within the sphere of the state's police power. As the court said, the law was to be sustained as being similar in kind to a workmen's compensation act, which throws the financial burden of industrial accidents upon the employer.⁸

W. C. J.

EVIDENCE: CONFESSIONS: ADMISSIBILITY FOR COURT OR JURY.—The Anglo-American method of trying cases before a divided tribunal, the judge and jury, raises difficult questions as to their respective duties. The court passes upon most disputed questions of fact except the ultimate issues,¹ and sometimes passes provisionally upon ultimate issues and the more important evidentiary matters. In determining whether the original of a document has been lost for the purpose of admitting secondary evidence, the court passes upon that question once and for all. If the copy is admitted, the jury must receive it whether it believes the original was lost or not. On the other hand, in admitting the declarations of an alleged agent, ordinarily there must first be proof of agency. All the court passes on in this case is whether there has been sufficient evidence presented from which reasonable men might find the existence of agency. The jurors should be instructed to disregard the declarations unless they believe agency has been proved.² The competency of a witness is passed on by the court without reference to the jury, but as the jurors are the

⁸ *Mountain Timber Co. v. Washington* (1917), 243 U. S. 219, 37 Sup. Ct. Rep. 260.

¹ Thayer, *Preliminary Treatise on Evidence*, p. 248.

² *Corpus Juris*, Vol. 2, p. 940.

sole judges of the credibility of the witness, his testimony may be disregarded on any ground including his lack of competency.

What, then, is the situation in regard to confessions? The orthodox theory, still prevailing in many jurisdictions, is that the court decides whether a confession is voluntary and admissible, although the jury in passing on the credibility of the witnesses may disbelieve the confession. Also, the jurors may believe, contrary to the opinion of the court, that improper inducements, as for instance the promise of a light sentence, have been used to obtain the confession. Yet they may, nevertheless, believe the confession to be true, and find accordingly.³ This view was expressed in the California courts in an extreme case in which it was held that the failure of the defendant to offer evidence to the court that the confession was involuntary, precluded him from offering the same proofs to the jury when presenting his own case in chief.⁴ This was plainly wrong under any view, for the defendant should have a right to have all questions affecting the credibility of the witnesses decided by the jury and he ought not to be compelled to put in his case before the prosecution has completed its evidence. The defendant may of course take the stand or offer other evidence when the prosecution first introduces the confession, and before its case has been closed. This also becomes matter for the jury to consider if the jury has not been withdrawn,⁵ which it really ought to be if the spirit of the confession rule is to be observed.⁶

By a second theory the court simply passes on the question whether there is some evidence to show that the confession was voluntary. If there is, the whole matter goes to the jury under appropriate instructions. This is an abrogation by the court of a part of its judicial functions, a somewhat lazy method of avoiding a decision where the evidence is conflicting, by passing it up to the jury. This procedure has been criticized as taking from the defendant his right to a ruling by the court on the question of the admissibility of the confession.⁷

The third theory is the one approved by the Supreme Court of California. The court must hear evidence preliminary to the admission of the confession and decide whether or not the confession is in fact voluntary. This decision is not final, however, for the whole matter is submitted to the jury under appropriate instructions that unless the jury finds the facts necessary to constitute the confession legally admissible, the confession should be

³ Wigmore on Evidence, § 861, and see § 1451.

⁴ *People v. Cahill* (1909), 11 Cal. App. 685, 106 Pac. 115.

⁵ *People v. Luis* (1910), 158 Cal. 185, 110 Pac. 580.

⁶ *Chamberlayne on Evidence*, § 1587, but see *People v. Brasch* (1908), 193 N. Y. 46, 85 N. E. 809.

⁷ *State v. Duncan* (1876), 64 Mo. 262.

disregarded.⁸ This is the view of the Supreme Court in *People v. Sweetman*,⁹ where approval has been withheld from the dictum of the District Court of Appeal in the same case.¹⁰ The latter court considered it error to instruct the jury that a confession must be disregarded if believed to be made under promise of reward, menace, duress, or fear of punishment. There is a certain logical accuracy in the theory of the Supreme Court but it complicates the matter before the jury by necessitating instructions on the technical and artificial law of confessions, difficult for the jury to understand, instructions that will in all probability be disregarded. The view of the Supreme Court is also unnecessary for the protection of the defendant because he is safeguarded by the court whose duty it is to exclude confessions not shown to be voluntary. The effect of the ruling of the Supreme Court is to give the defendant two chances to avoid his confession, two trials of the same issue. The case, however, is an illustration of the tendency in the law to pass up to the jury all disputed questions of fact whenever possible, especially where the question, while not necessarily the ultimate issue in the case, is nevertheless so strongly probative as to be really decisive.

A. M. K.

LIS PENDENS: PURCHASER PENDENTE LITE.—The rights of a purchaser of specific property which is the subject matter of litigation at the time of the purchase have been fully discussed by the courts in this country and in England. By statute in this state the doctrine of "lis pendens" may become operative in cases involving the title and possession of real property.¹ The question whether the doubtful common law doctrine "that all Her Majesty's subjects are bound to take cognizance, at their own peril, of what is passing in Her Majesty's Courts of Justice with reference to specific property"² applies to personal property has not been settled in the United States by unanimity of opinion.³ In California the Supreme Court in *MacDermot v. Hayes*⁴ decided that a purchaser of shares of corporate stock during the pendency of an action to have the stock declared the subject of a trust, who took

⁸ *People v. Thomson* (1905), 145 Cal. 717, 79 Pac. 435, a case of a dying declaration which involves the same principle as confessions. The language in *People v. Oliveria* (1899), 127 Cal. 376, 59 Pac. 772, that the jurors are the sole judges of credibility, might be construed otherwise, but was probably not so intended. See also *People v. Profumo* (1913), 23 Cal. App. 376, 138 Pac. 109.

⁹ (April 2, 1917), 53 Cal. Dec. 459, 164 Pac. 627, 628; *People v. Gibson* (1915), 28 Cal. App. 334, 152 Pac. 316, in which the court held that the admissibility of the confession is a question to be determined solely by the court must also be considered as overruled.

¹⁰ (Feb. 1, 1917), 24 Cal. App. Dec. 234.

¹ Cal. Code Civ. Proc., § 409.

² Chitty, J., in *Wigrain v. Buckley*, 1894, 3 Ch. Div. 483, 488.

³ 21 Am. & Eng. Encyc. of Law 626, 25 Cyc. 1453.

⁴ (May 9, 1917), 53 Cal. Dec. 586, 594.